



June 13, 2018

VIA FOIAONLINE.REGULATIONS.GOV

U.S. Environmental Protection Agency

Re: Freedom of Information Act Request: EPA FOIA Request Queue List

Dear FOIA Officer:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, *as amended* ("FOIA"), from the Center for Biological Diversity ("Center"), a non-profit organization that works to secure a future for all species hovering on the brink of extinction through science, law, and creative media, and to fulfill the continuing educational goals of its membership and the general public in the process.

REQUESTED RECORD

The Center requests from the U.S. Environmental Protection Agency ("EPA") Headquarters: the complete list of FOIA requests currently in EPA's queue, as referenced in EPA's recent status update emails. *See, e.g., Attachment A (EPA FOIA Status Update Email).*

EXPEDITED PROCESSING

The Center requests expedited processing for this FOIA request pursuant to EPA's FOIA regulations. 40 C.F.R. § 2.104. As demonstrated below, the Center is a non-profit organization that is primarily engaged in publishing or otherwise disseminating information in order to inform the public about the operations and activities of the federal government.

Pursuant to 40 C.F.R. § 2.104(e)(2)(ii), there is an urgency to inform the public about an actual or alleged Federal Government activity, and this request is made by a person primarily engaged in disseminating information. The Center's need to access EPA's FOIA queue list is particularly urgent in light of the fact that EPA has been under fire for operating under a veil of secrecy, contrary to FOIA. The Center requested this record twice via electronic mail, yet EPA failed to produce the list. The Center is only seeking one record that is seemingly not subject to FOIA's commonly-used exemptions, due to its factual and non-confidential nature. Furthermore, the public has an intrinsic right to access and review EPA's FOIA queue list in order to understand the requests EPA is prioritizing, particularly since EPA's "Obama-era backlog" of FOIA requests is under scrutiny from top officials. *See, e.g., Kevin Bogardus, "Pruitt to clear Obama's FOIAs while Trump requests linger," E&E News, <https://www.eenews.net/stories/1060067109> (last visited June 13, 2018).* The public and numerous media outlets are left to wonder if EPA is giving any attention to FOIA requests

targeting the Trump administration. The requested FOIA queue list will shed light on which FOIA requests EPA ranks at the top of its queue.

Due to the simplicity of this request and the high public value to every person who has submitted a FOIA request to EPA, the Center's request should be expedited and responded to immediately.

I, Ann K. Brown, certify that the statements contained in this Request for Expedited Processing are true and correct to the best of my knowledge.

THE FREEDOM OF INFORMATION ACT

Under the FOIA Improvement Act of 2016, agencies are prohibited from denying requests for information under FOIA unless the agency reasonably believes release of the information will harm an interest that is protected by the exemption. FOIA Improvement Act of 2016 (Public Law No. 114-185), codified at 5 U.S.C. § 552(a)(8)(A).

If you decide to invoke a FOIA exemption, please include sufficient information for us to assess the basis for the exemption, including any interest(s) that would be harmed by release. Please include a detailed ledger which includes:

1. Basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and
2. Complete explanations and justifications for the withholding, including the specific exemption(s) under which the record (or portion thereof) was withheld and a full explanation of how each exemption applies to the withheld material. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

If you determine that portions of the record requested are exempt from disclosure, we request that you segregate the exempt portions and mail the non-exempt portions of the record to my attention at the address below within the statutory time limit. 5 U.S.C. § 552(b).

Finally, FOIA's "frequently requested record" provision was enacted as part of the 1996 Electronic Freedom of Information Act Amendments, and requires all federal agencies to give "reading room" treatment to any FOIA-processed records that, "because of the nature of their subject matter, the agency determines have become the subject of subsequent requests for substantially the same records." See 5 U.S.C. § 552(a)(2)(D)(ii)(I). Also, enacted as part of the 2016 FOIA Improvement Act, FOIA's Rule of 3 requires all federal agencies to proactively "make available for public inspection in an electronic format" "copies of records, regardless of form or format ... that have been released to any person ... and ... that have been requested 3 or more times." 5 U.S.C. § 552(a)(2)(D)(ii)(II). Therefore, we respectfully request that you make available online any records that the agency determines will become the subject of subsequent requests for substantially the same records, and records that have been requested three or more times.

FORMAT OF THE REQUESTED RECORD

Under FOIA, you are obligated to provide the record in a readily accessible electronic format and in the format requested. *See, e.g.*, 5 U.S.C. § 552(a)(3)(B) (“In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”).

“Readily accessible” means text-searchable and OCR-formatted. *See* 5 U.S.C. § 552(a)(3)(B).

Pursuant to this requirement, we hereby request that you produce the record in an electronic format and in their native file formats. Additionally, please provide the record in a load-ready format with a CSV file index or Excel spreadsheet. If you produce files in .PDF format, then please omit any “portfolios” or “embedded files.” Portfolios and embedded files within files are not readily accessible. Please do not provide the record in a single, or “batched,” .PDF file. We appreciate the inclusion of an index.

If you should seek to withhold or redact the responsive record, we request that you: (1) identify each such record with specificity (including date, author, recipient, and parties copied); (2) explain in full the basis for withholding responsive material; and (3) provide all segregable portions of the record for which you claim a specific exemption. 5 U.S.C. § 552(b). Please correlate any redactions with specific exemptions under FOIA.

RECORD DELIVERY

We appreciate your help in expeditiously obtaining a determination on the requested record. As mandated in EPA FOIA regulations, we anticipate a reply within 10 working days. 40 C.F.R. § 2.104(e)(4). Failure to comply within the statutory timeframe may result in the Center taking additional steps to ensure timely receipt of the requested list. Please provide a complete reply as expeditiously as possible. You may email or mail copies of the requested record to:

Ann K. Brown
Center for Biological Diversity
P.O. Box 11374
Portland, OR 97211
foia@biologicaldiversity.org

If you find that this request is unclear, or if the responsive record is voluminous, please email me to discuss the scope of this request.

REQUEST FOR FEE WAIVER

FOIA was designed to provide citizens a broad right to access government records. FOIA’s basic purpose is to “open agency action to the light of public scrutiny,” with a focus on the public’s “right to be informed about what their government is up to.” *NARA v. Favish*, 541 U.S. 157, 171 (2004) quoting *U.S. Dep’t of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted). In order to provide public access to this information, FOIA’s fee waiver provision requires that “[d]ocuments shall be furnished without any charge or at a [reduced] charge,” if the request satisfies the standard. 5

U.S.C. § 552(a)(4)(A)(iii). FOIA's fee waiver requirement is "liberally construed." *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003); *Forest Guardians v. U.S. Dept. of Interior*, 416 F.3d 1173, 1178 (10th Cir. 2005).

The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as the Center access to government records without the payment of fees. Indeed, FOIA's fee waiver provision was intended "to prevent government agencies from using high fees to discourage certain types of requesters and requests," which are "consistently associated with requests from journalists, scholars, and *non-profit public interest groups*." *Ettlinger v. FBI*, 596 F.Supp. 867, 872 (D. Mass. 1984) (emphasis added). As one Senator stated, "[a]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information" 132 Cong. Rec. S. 14298 (statement of Senator Leahy).

I. The Center Qualifies for a Fee Waiver.

Under FOIA, a party is entitled to a fee waiver when "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the [Federal] government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). EPA's regulations at 40 C.F.R. § 2.107(l)(1)-(3) establish the same standard.

Thus, EPA must consider four factors to determine whether a request is in the public interest: (1) whether the subject of the requested record concerns "the operations or activities of the Federal government," (2) whether the disclosure is "likely to contribute" to an understanding of government operations or activities, (3) whether the disclosure "will contribute to public understanding" of a reasonably broad audience of persons interested in the subject, and (4) whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities. 40 C.F.R. § 2.107(1)(2). As shown below, the Center meets each of these factors.

A. The Subject of This Request Concerns "The Operations and Activities of the Government."

The subject matter of this request concerns the operations and activities of the EPA. This request asks for the complete list of FOIA requests currently in EPA's queue, as referenced in EPA's recent status update emails. *See, e.g., Attachment A.*

This FOIA will provide the Center and the public with crucial insight into EPA's current list requests submitted pursuant to FOIA. It is clear that a federal agency's compilation of requests under federal law is a specific and identifiable activity of the government, and in this case it is the executive branch agency of the EPA. *Judicial Watch*, 326 F.3d at 1313 ("[R]easonable specificity is all that FOIA requires with regard to this factor") (internal quotations omitted). Thus, the Center meets this factor.

B. Disclosure is “Likely to Contribute” to an Understanding of Government Operations or Activities.

The requested record is meaningfully informative about government operations or activities and will contribute to an increased understanding of those operations and activities by the public.

Disclosure of the requested record will allow the Center to convey to the public information about the total list of FOIA requests in EPA’s queue, and the uptick in FOIA requests under the Trump administration. More importantly, the list could provide insight into whether EPA has been intentionally avoiding producing records under FOIA. *See generally*, Attachment B (June 11, 2018 Letter from Elijah E. Cummings to EPA Administer Scott Pruitt). Once the information is made available, the Center will analyze it and present it to its 1.6 million members and online activists and the general public in a manner that will meaningfully enhance the public’s understanding of this topic.

Thus, the requested record is likely to contribute to an understanding of EPA’s operations and activities.

C. Disclosure of the Requested Record Will Contribute to a Reasonably Broad Audience of Interested Persons’ Understanding of EPA’s FOIA Queue List.

The requested record will contribute to public understanding of whether EPA’s actions are consistent with its mission to “to protect human health and the environment.”¹ As explained above, the record will contribute to public understanding of this topic.

Activities of EPA generally, and specifically the number and types of FOIA requests it is receiving, are areas of interest to a reasonably broad segment of the public. The Center will use the information it obtains from the disclosed record to educate the public at large about the subject matter. *See W. Watersheds Proj. v. Brown*, 318 F.Supp.2d 1036, 1040 (D. Idaho 2004) (“... find[ing] that WWP adequately specified the public interest to be served, that is, educating the public about the ecological conditions of the land managed by the BLM and also how ... management strategies employed by the BLM may adversely affect the environment.”).

Through the Center’s synthesis and dissemination (by means discussed in Section II, below), disclosure of information contained in and gleaned from the requested record will contribute to a broad audience of persons who are interested in the subject matter. *Ettlinger v. FBI*, 596 F.Supp. at 876 (benefit to a population group of some size distinct from the requester alone is sufficient); *Carney v. Dep’t of Justice*, 19 F.3d 807, 815 (2d Cir. 1994), *cert. denied*, 513 U.S. 823 (1994) (applying “public” to require a sufficient “breadth of benefit” beyond the requester’s own interests); *Cnty. Legal Servs. v. Dep’t of Hous. & Urban Dev.*, 405 F.Supp.2d 553, 557 (E.D. Pa. 2005) (in granting fee waiver to community legal group, court noted that while the requester’s “work by its nature is unlikely to reach a very general audience,” “there is a segment of the public that is interested in its work”).

¹ EPA, *About EPA: Who We Are and What We Do*, <https://www.epa.gov/aboutepa/our-mission-and-what-we-do> (last visited June 11, 2018).

Indeed, the public does not currently have an ability to easily evaluate the requested record because it is not in the public domain. *See Cmty. Legal Servs. v. HUD*, 405 F.Supp.2d 553, 560 (D. Pa. 2005) (because requested records “clarify important facts” about agency policy, “the CLS request would likely shed light on information that is new to the interested public.”). As the Ninth Circuit observed in *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1286 (9th Cir. 1987), “[FOIA] legislative history suggests that information [has more potential to contribute to public understanding] to the degree that the information is new and supports public oversight of agency operations... .”²

Disclosure of this record is not only “likely to contribute,” but is certain to contribute, to public understanding of EPA’s current list of FOIA requests in its queue. The public is always well served when it knows how the government conducts its activities, particularly matters touching on legal questions. Hence, there can be no dispute that disclosure of the requested record to the public will educate the public about this topic.

D. Disclosure is Likely to Contribute Significantly to Public Understanding of Government Operations or Activities.

The Center is not requesting this record merely for their intrinsic informational value. Disclosure of the requested record will significantly enhance the public’s understanding of EPA’s FOIA queue list and the quantity and nature of requests submitted to EPA, as compared to the level of public understanding that exists prior to the disclosure. Indeed, public understanding will be *significantly* increased as a result of disclosure because the requested record will help reveal more about the FOIA requests in EPA’s queue.

The record is also certain to shed light on EPA’s compliance with EPA’s mission.³ Such public oversight of agency action is vital to our democratic system and clearly envisioned by the drafters of the FOIA. Thus, the Center meets this factor as well.

II. The Center has a Demonstrated Ability to Disseminate the Requested Information Broadly.

The Center is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to environmental issues. The Center has been substantially involved in the activities of numerous government agencies for over 25 years, and has consistently displayed its ability to disseminate information granted to it through FOIA.

In consistently granting the Center’s fee waivers, agencies have recognized: (1) that the information requested by the Center contributes significantly to the public’s understanding of the government’s operations or activities; (2) that the information enhances the public’s

² In this connection, it is immaterial whether any portion of the Center’s request may currently be in the public domain because the Center requests considerably more than any piece of information that may currently be available to other individuals. *See Judicial Watch*, 326 F.3d at 1315.

³ *See supra* note 1.

understanding to a greater degree than currently exists; (3) that the Center possesses the expertise to explain the requested information to the public; (4) that the Center possesses the ability to disseminate the requested information to the general public; (5) and that the news media recognizes the Center as an established expert in the field of imperiled species, biodiversity, and impacts on protected species. The Center's track record of active participation in oversight of governmental activities and decision making, and its consistent contribution to the public's understanding of those activities as compared to the level of public understanding prior to disclosure are well established.

The Center intends to use the record requested here similarly. The Center's work appears in more than 2,500 news stories online and in print, radio and TV per month, including regular reporting in such important outlets as *The New York Times*, *Washington Post*, *The Guardian*, and *Los Angeles Times*. Many media outlets have reported on the lack of government transparency under the Trump administration. In 2017, more than 2.7 million people visited the Center's extensive website, and viewed pages a total of 5.7 million times. The Center sends out more than 277 email newsletters and action alerts per year to more than 1.6 million members and supporters. Three times a year, the Center sends printed newsletters to more than 63,000 members. More than 304,800 people have "liked" the Center on Facebook, and there are regular postings regarding environmental and human health. The Center also regularly tweets to more than 57,900 followers on Twitter. The Center intends to use any or all of these far-reaching media outlets to share with the public information obtained as a result of this request.

Public oversight and enhanced understanding of EPA's duties is absolutely necessary. In determining whether disclosure of requested information will contribute significantly to public understanding, a guiding test is whether the requester will disseminate the information to a reasonably broad audience of persons interested in the subject. *Carney v U.S. Dept. of Justice*, 19 F.3d 807 (2nd Cir. 1994). The Center need not show how it intends to distribute the information, because "[n]othing in FOIA, the [agency] regulation, or our case law require[s] such pointless specificity." *Judicial Watch*, 326 F.3d at 1314. It is sufficient for the Center to show how it distributes information to the public generally. *Id.*

III. Obtaining the Requested Record is of No Commercial Interest to the Center.

Access to government records, disclosure forms, and similar materials through FOIA requests is essential to the Center's role of educating the general public. Founded in 1994, the Center is a 501(c)(3) nonprofit conservation organization (EIN: 27-3943866) with more than 1.6 million members and online activists dedicated to the protection of endangered and threatened species and wild places. The Center has no commercial interest and will realize no commercial benefit from the release of the requested record.

IV. Conclusion

For all of the foregoing reasons, the Center qualifies for a full fee waiver. We hope that EPA will immediately grant this fee waiver request and begin to search and disclose the requested record without any unnecessary delays.

If you have any questions, please contact me at foia@biologicaldiversity.org. The record and any related correspondence should be sent to my attention at the address below.

Sincerely,

A handwritten signature in black ink, appearing to read "Ann K. Brown", with a stylized, flowing script.

Ann K. Brown
Open Government Coordinator
CENTER FOR BIOLOGICAL DIVERSITY
P.O. Box 11374
Portland, OR 97211-0374
foia@biologicaldiversity.org

Attachments

Attachment A (EPA FOIA Status Update Email)

Attachment B (June 11, 2018 Letter from Elijah E. Cummings to EPA Administer Scott Pruitt)

Attachment A

Ann Brown

From: white.candace@epa.gov
Sent: Monday, June 04, 2018 2:43 PM
To: FOIA
Subject: FOIA Request: EPA-HQ-2017-005517

06/04/2018 05:42 PM
FOIA Request: EPA-HQ-2017-005517

This email is about your Freedom of Information Act (FOIA) request, EPA-HQ-2017-005517; it is assigned to the Office of the Administrator for processing.

The Office of the Administrator has experienced a significant increase in FOIA requests since the start of this administration. As of May 7, 2018, your FOIA request, EPA-HQ-2017-005517, is currently 228 in the queue. We are processing all FOIAs within the scope of our resources, given the sharp increase in requests. If possible, we will provide you with interim releases as they become available.

In fiscal year 2017, the average processing time for complex FOIA requests processed by AO was 388 working days. Using this number as instructive to estimate the time to process your request, the new estimated completion date for this FOIA is September 25, 2018.

The following are some sources of publicly available information that you can access immediately and which may contain information responsive to your request:

- Our website: <https://www.epa.gov/home/advanced-search>
- The EPA newsroom: <https://www.epa.gov/newsroom>
- FOIAonline for records previously released through FOIA requests:
<https://foiaonline.regulations.gov/foia/action/public/search/>
- Frequently requested records: <https://www.epa.gov/foia/national-online-foia-library#request>
- MyProperty: <https://www3.epa.gov/enviro/facts/myproperty/>
- Technical/scientific/educational publications: <https://www.epa.gov/nscep>
- Superfund sites and data: <https://www.epa.gov/foia/national-online-foia-library#superfund>
- Historical material reflecting the EPA website as it existed on January 19, 2017
<https://19january2017snapshot.epa.gov/>

If you wish to clarify your request, so that once we reach the request in the queue, it might be processed in a shorter amount of time, please contact Ryan Yaeger, Yaeger.Ryan@epa.gov. If you are no longer interested in the requested records, please let us know so that we can remove your request from the queue. Please be sure to include your tracking number, EPA-HQ-2017-005517, in the email subject to ensure a timely response.

In addition to seeking assistance from the contact above, you may seek assistance from the EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). OGIS's services are described on their website, <https://www.archives.gov/ogis>. You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001; email: ogis@nara.gov; telephone: (202) 741-5770 or (877) 684-6448; or fax: (202) 741-5769.

Thank you,

Ryan Yaeger

Attachment B

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051

<http://oversight.house.gov>

June 11, 2018

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Administrator Pruitt:

I am writing regarding very troubling reports that you may be avoiding producing records under the Freedom of Information Act (FOIA) relating to your tenure as Administrator of the Environmental Protection Agency (EPA). Given the vast number of allegations against you, the American people deserve more transparency regarding your actions—not less.

According to one of your former top Republican aides, you intentionally sought to delay producing records relating to your tenure by directing your front office staff to respond first to old requests from the Obama Administration. Other Republican political appointees on your senior staff confirmed your new “first in, first out” policy, which appears to contradict EPA regulations and Department of Justice guidance.

In addition, according to internal EPA documents, you have instituted a new process requiring senior political appointees to review FOIA responses before they are released—a practice our Committee has condemned on a bipartisan basis in the past. Your actions are particularly troubling in light of multiple reports that you have retaliated against EPA staff who disclose waste, fraud, and abuse.

Under your tenure, EPA’s front office is now responding more slowly, withholding more information, and rejecting more requests, according to EPA’s own data and independent sources. Combined with your refusal to produce documents requested by Congress, your actions in delaying records under FOIA raise concerns about a fundamental lack of transparency at EPA.

Withholding Records From Administrator’s Office

On April 10, 2018, Kevin Chmielewski, your former Deputy Chief of Staff for Operations and a campaign aide to President Donald Trump, informed staff from my office and several other congressional offices that you appear to be intentionally delaying the release of documents under FOIA relating to your tenure at EPA.

Mr. Chmielewski stated that you directed your staff not to respond to FOIA requests regarding your tenure until requests from the Obama Administration had been completed. According to Mr. Chmielewski, during a meeting of your front office senior staff, you directed staff to justify this tactic using the talking point of “first in, first out.”

On May 18, 2018, Millan Hupp, your former Director of Scheduling and Advance, confirmed Mr. Chmielewski’s account that the Administrator directed this “first in, first out” policy during a senior staff meeting. During a transcribed interview with Republican and Democratic Committee staff, she had this exchange:

Q: Did the Administrator ever announce at a staff meeting that the Administrator’s office should treat FOIA requests as first in, first out?

A: I have heard discussions about that, yes.

Q: With the Administrator?

A: He has made mention of it, yes.¹

Ms. Hupp confirmed that you discussed responding to FOIA requests from the Obama Administration rather than requests for information about your own tenure:

Q: When he or someone else discussed first in, first out, did anyone indicate that first in, first out meant that the office should fulfill the old requests from the previous administration before you work to fulfill the current requests of this administration?

A: That was the nature of the discussions I was exposed to. I was not part of the decision-making.

Q: Can you describe that discussion?

Q: I don’t recall ever having any lengthy in-depth discussions about this as this is not part of my job description, but anything that I heard on it was related to first in, first out.

Q: And who do you recall [having] those discussions with?

A: I mean, I recall the Administrator bringing it up.²

In a separate transcribed interview on May 22, 2018, your former Senior Advisor, Sarah Greenwalt, informed Committee staff that she disagreed with the first in, first out policy and recommended against it:

Q: What was, practically speaking, a better way to handle FOIAs?

A: Not first-in, first-out.

Q: I mean—

A: To evaluate them as they come in, recognizing that some FOIAs are larger than others and more time-consuming and more complicated than others.

Q: Was your suggestion to do those first or later?

¹ House Committee on Oversight and Government Reform, Interview of Millan Hupp (May 18, 2018).

² *Id.*

Q: My suggestion was to balance everything, the deadlines that we have with the responsibility to work with those requesters to try to get them the information in as timely a way as we can.³

The orders you apparently gave to delay producing documents relating to your tenure appear to directly contradict EPA's own FOIA regulations, as well as guidance issued by the Department of Justice. EPA regulations require the agency to use "multitrack processing" in which simple requests are processed more quickly than complex requests. EPA regulations provide that if the agency determines that a request would be placed in the slower track, the agency would provide the requester with the opportunity to narrow the scope of the request.⁴ Guidance issued by the Department of Justice encourages agencies to use multi-track processing so that simple requests are processed more quickly and do not get stuck behind older, more complex requests.⁵

New Political Review Process Established to Filter FOIA Responses

According to internal EPA documents, the agency has established a new process in which political appointees review FOIA responses before they are released instead of allowing career employees to handle these matters.⁶ According to one report, your political appointees were "chastising career employees who released documents in accordance with FOIA without letting them screen the records first."⁷

On June 6, 2017, Attorney-Advisor Jonathan Newton sent an email instructing FOIA coordinators at EPA to send pending FOIA releases for review by three Trump Administration political appointees. The email stated: "please send copies of pending FOIA releases to Ryan Jackson, Liz Bowman, and Amy Graham, 48 hours before the release."⁸

In July 2017, Mr. Jackson sent a memo to the heads of six EPA offices inside and outside the Office of the Administrator. The memo stated:

By this memorandum, I am asking you to implement a pilot project centralizing all incoming Freedom of Information Act requests directed to the Immediate Office of the

³ House Committee on Oversight and Government Reform, Interview of Sarah Greenwalt (May 22, 2018).

⁴ 40 C.F.R. § 2.104.

⁵ Department of Justice, *OIP Guidance for Further Improvement* (2012) (online at www.justice.gov/oip/blog/foia-guidance-10).

⁶ *EPA Clamps Down on Document Requests Linked to Pruitt*, Politico (May 6, 2018) (online at www.politico.com/story/2018/05/06/pruitt-epa-document-requests-570289). These documents were produced following litigation by the Natural Resources Defense Council, after EPA failed to provide them in response to a FOIA request.

⁷ *Id.*

⁸ Email from Jonathan Newton, Attorney Advisor, Office of the Executive Secretariat, to Staff, Environmental Protection Agency (June 6, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/Newton%20email.pdf>).

Office of the Administrator, the Office of Public Affairs (OPA), the Office of Policy (OP), and the Office of Congressional and Intergovernmental Relations (OCIR) consistent with the attached project description.⁹

Mr. Jackson attached to his memo a document entitled “AO FOIA Centralization Pilot Project Description.” This document describes a process in which a “FOIA Expert Assistance Team (FEAT) Team” within the Office of General Counsel would review FOIA requests, develop a strategy for responding, and “ensure appropriate consultation with senior officials in the relevant offices through the lifecycle of a request,” including “a pre-production awareness review opportunity for material to be released and ensuring the official authorizing a response is authorized to do so under the applicable agency guidance and delegations.”¹⁰

On August 2, 2017, Becky Dolph, Director of the FEAT Team, sent an email to Mr. Jackson, writing, “As we are implementing the pilot, I have instructed my staff that no AO requests are to be issued without the opportunity for an awareness review by you, OPA and the senior leadership of any other affected offices.”¹¹

On August 8, 2017, Brian Hope, the Acting Director of the Office of the Executive Secretariat, sent an email to several attorneys in your office, writing:

Ryan Jackson has just issued instructions to have all AO FOIA releases reviewed by the FEAT team prior to distribution for awareness review by the political team. Please send Becky Dolph all proposed releases that are currently in the awareness review process, as well as all future proposed releases. At the conclusion of her team’s review, they will forward the proposed release for the political team’s awareness review.¹²

Ms. Greenwalt told Committee staff in her interview that she reviewed responses to FOIA requests and identified potential additional redactions as part of EPA’s awareness review as part of her duties as the Senior Advisor for Water and Cross-Cutting Issues.¹³

⁹ Email from Ryan Jackson, Chief of Staff, to Kevin Minoli, Acting General Counsel, Samantha Dravis, Associate Administrator for Policy, et al., Environmental Protection Agency (July 24, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/R.%20Jackson%20Email%20with%20Memo.pdf>).

¹⁰ Environmental Protection Agency, *AO FOIA Centralization Pilot Project Description* (July 21, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/AO%20Pilot%20Project%20Description.pdf>).

¹¹ Email from Becky Dolph, Director, FOIA Expert Assistance Team Office, to Ryan Jackson, Chief of Staff, Environmental Protection Agency (Aug. 2, 2018) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/B.%20Dolph%20Email.pdf>).

¹² Email from Brian Hope, Acting Director, Office of the Executive Secretariat, to Jonathan Newton, Frederick No, et al., Environmental Protection Agency (Aug. 8, 2017) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/B.%20Hope%20Email.pdf>).

¹³ House Committee on Oversight and Government Reform, Interview of Sarah Greenwalt (May 22, 2018).

Slowing of FOIA Responses

According to multiple sources of data over the past several years, FOIA responses from your office have slowed dramatically under your tenure as Administrator.

For example, the nonpartisan watchdog organization Project on Government Oversight has reported that only 16.6% of FOIA requests to your office, the Office of the Administrator, were closed from January 20, 2017, to December 29, 2017, compared to a closure rate of 78.76% for all EPA requests during that same period.¹⁴

In addition, according to EPA's FOIA report for Fiscal Year 2017, EPA granted full requests at a lower rate in 2017 than in the last year of the Obama Administration in 2016, and it also denied full requests at a higher rate than in the last year of the Obama Administration.¹⁵

According to this data, EPA also rejected requests for not being "reasonably described" in 2017 at four times the rate as in 2016. In 2016, EPA rejected 114 requests for not being reasonably described, which represented 1% of the requests processed that year. In 2017, EPA rejected nearly 5% of requests for this same reason, and most of those (89%) were requests for information from EPA headquarters.¹⁶

In one example, the open government organization American Oversight filed a FOIA request for all "emails between Scott Pruitt and Ryan Jackson (Chief of Staff), John Reeder (Deputy Chief of Staff), or Mike Flynn (Acting Deputy Administrator) from June 1, 2017, to June 15, 2017."¹⁷ EPA responded that this request did not "reasonably define a set of records to search" and did not "provide details such as the subject matters, titles or key terms."¹⁸

It is difficult to understand why that EPA could not locate the records described by American Oversight. According to the FOIA Guide issued by the Department of Justice, courts have recognized "that a description of a requested record is sufficient if it enables a professional agency employee familiar with the subject area to locate the record with a 'reasonable amount of effort.'"¹⁹

¹⁴ Project on Government Oversight, *EPA Drags Its Feet with Records Requests Aimed at Scott Pruitt's Office* (Feb. 25, 2017) (online at www.pogo.org/blog/2018/02/epa-drags-its-feet-with-foia-records-requests-aimed-at-scott-pruitts-office.html).

¹⁵ Environmental Protection Agency, *EPA FOIA Annual Report for Fiscal Year 2017* (Mar. 2018) (online at www.epa.gov/sites/production/files/2018-03/documents/2017_foia_annual_report.pdf); Environmental Protection Agency, *EPA FOIA Annual Report for Fiscal Year 2016* (Mar. 2017) (online at www.epa.gov/sites/production/files/2017-01/documents/2016_foia_annual_report.pdf).

¹⁶ *Id.*

¹⁷ American Oversight, *FOIA Request* (EPA-HQ-2017-008848) (June 23, 2017).

¹⁸ *American Oversight v. U.S. Environmental Protection Agency*, Case No. 18-cv-364 (TJK) (Feb. 16, 2017) (online at www.americanoversight.org/document/complaint-american-oversight-v-epa-epa-pruitt-emails).

¹⁹ Department of Justice, *Guide to the Freedom of Information Act* (July 24, 2013) (online at www.justice.gov/oip/doj-guide-freedom-information-act-0).

Conclusion and Request for Documents

Your actions injecting politics into the FOIA process mark a stark departure from previous practice. In 2015, the EPA Inspector General issued a report concluding that political appointees in the Obama Administration had very little involvement in the FOIA process. The report stated: “All interviewees said that political appointees are rarely involved in the FOIA response process and only participate when the appointees themselves have responsive records to provide.”²⁰

When allegations of political interference did arise during the previous Administration, both Democrats and Republicans made clear that civil servants should be allowed to do their jobs without interference. For example, during a hearing before our Committee in 2011, our current Chairman, Rep. Trey Gowdy, criticized an official from the Department of Homeland Security for having political appointees review FOIA responses. He asked the witness, “Would you concede that slow walking or taking your time in complying with an otherwise legitimate FOIA request could be interference?”²¹

Based on the information set forth above, I request that you produce, by June 25, 2018, the following documents covering the period between, January 20, 2017, to the present:

1. all documents and communications referring or relating to the order in which FOIA requests should be processed at EPA;
2. all documents and communications referring or relating to any process used by EPA to prioritize responses to FOIA requests;
3. all documents and communications referring or relating to FOIA requests that were rejected for being not reasonably described;
4. all documents and communications referring or relating to the process for determining whether a FOIA request is reasonably described;
5. all documents and communications referring or relating to the process for handling FOIA requests for information from the Office of the Administrator;
6. all responses provided to FOIA requests for information from the Office of the Administrator;

²⁰ Office of the Inspector General, Environmental Protection Agency, *Response to Congressional Request Concerning Political Interference in Release of Documents Under the Freedom of Information Act* (Aug. 20, 2015) (online at www.epa.gov/sites/production/files/2015-09/documents/20150820-15-p-0261.pdf).

²¹ House Committee on Oversight and Government Reform, *Hearing on Why Isn't the Department of Homeland Security Meeting the President's Standard on FOIA?*, 112th Cong. (Mar. 31, 2011) (online at www.gpo.gov/fdsys/pkg/CHRG-112hhrg67719/pdf/CHRG-112hhrg67719.pdf).

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7. documents and communications referring or relating to reviews by Trump Administration political appointees to review FOIA requests or responses; and
8. documents and communications referring or relating to any review of FOIA requests or responses by White House employees.

Thank you for your prompt attention to this request.

Sincerely,

A handwritten signature in black ink, appearing to read "E. E. Cummings", written in a cursive style.

Elijah E. Cummings
Ranking Member

cc: The Honorable Trey Gowdy, Chairman